IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

OP.No. 1173 of 2000(Y)

PETITIONER:

MALIAKKAL BANKERS,
KADAVANTHARA, REPRESENTED BY ITS
PROPRIETOR JOSEPH ANTONY, NEDUMTHALLY
MALIKEL, NORTH PARAVUR.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. **THE PRINCIPAL SECRETARY TO GOVERNMENT,**
   TAXES (H) DEPARTMENT, TRIVANDRUM.

2. **THE DEPUTY COMMISSIONER OF AGRICULTURAL INCOME**
   TAX AND SALES TAX, ERNAKULAM.

3. **THE INSPECTING ASSISTANT COMMISSIONER OF**
   AGRICULTURAL INCOME TAX AND SALES TAX,
   MATTANCHERI, ERNAKULAM DISTRICT.

BY SPL.GOVERNMENT PLEADER (TAXES)SRI.TEKCHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.1853/2000 IN O.P.NO.1173/2000 M

DISMISSED

20/09/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D GE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST MARCH 1996 TOGETHER WITH AUDITOR'S REPORT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. 2/08/96.**

EXT.P2: **COPY OF THE NOTICE NO.A5-1278/95 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DTD. 2/01/97.**

EXT.P3: **COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT DTD. 9/01/97.**

EXT.P4: **COPY OF THE ORDER NO.A5-1278/95 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DTD. 16/01/97.**

EXT.P5: **COPY OF THE ORDER NO.KML APPEAL 1/98 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DTD. 8/10/98.**

EXT.P6: **COPY OF THE LETER NO.24050/H2/98/TD ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 3/12/99.**

EXT.P7: **COPY OF THE CERTIFICATE NO.GEN/54/99-2000 ISSUED BY THE SOUTH INDIAN BANK LTD., TO THE PETITIONER DTD. 23/12/99.**

EXT.P8: **COPY OF THE CERTIFICATE NO.NPR/ /99 ISSUED BY THE FEDERAL BANK LTD., TO THE PETITIONER.**

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.1173 OF 2000

Dated this the 20th day of September, 2007

JUDGMENT

The petitioner, going by the impugned orders, is a business enterprise with small turn over in money lending. The statutory authorities have come to the conclusion that there was suppression in the sense that an amount of Rs.27,213/- remains as unexplained income, though accounted against miscellaneous income.

2. It was also found that appropriate security deposit has not been made in relation to the business, which, according to the Department, has an annual turn over in excess of rupees in lakhs. At the stage of admission, an interim order was issued on 12.1.2000 imposing a condition that the petitioner has to pay an amount of Rs.15,000/-. It is submitted that such amount has been deposited. The impugned orders on the face of it appears to be jurisdictionally correct but not wholly sustainable in law in as much as the quantum of penalty imposed on the petitioner

does not appear to be in tune with the totality of the facts and circumstances of the case.

In the aforesaid circumstances, penalty orders will stand modified to the effect that only an amount of Rs.15,000/- is payable by the petitioner towards penalty. If such amount has already been remitted in terms of the interim order, this judgment will stand satisfied. If the amount of Rs.15,000/- has not been remitted by the petitioner in terms of the aforesaid interim order, this writ petition will stand dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.1173 OF 2000

JUDGMENT

20th SEPTEMBER, 2007.

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